

CREW | citizens for responsibility and ethics in washington

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November 18, 2015

Federal Election Commission
Office of Complaints Examination
and Legal Administration
Attn: Jeff S. Jordan, Supervisory Attorney
999 E Street, N.W.
Washington, D.C. 20463

*Received
Federal Election Commission
Office of General Counsel*

Re: MUR 6746/Amended Complaint

Dear Mr. Jordan:

Please find under cover of this letter an amended complaint in MUR 6746. We file this amended complaint to supplement the complainants provided in CREW's original complaint, filed on August 5, 2013. In the two years during which CREW's complaint has been pending, CREW has experienced staff changes necessitating an update to the parties to the complaint. CREW submits this amended complaint to substitute me, CREW's current executive director, as a complainant for CREW's previous executive director, Melanie Sloan. Accordingly, the amended complaint includes new allegations specific to me (*see* Am. Compl. ¶¶ 1, 6, and conclusion), removes allegations specific to Ms. Sloan, and clarifies that the relief sought includes ordering respondents to file with the FEC and make public appropriate disclosures reports. The exhibits to the amended complaint are identical to the exhibits to the original complaint and are incorporated therein, but, in the interest of not duplicating copies in the administrative record, CREW does not resubmit the exhibits.

Please further note that our address has changed. Please direct all future correspondence to the address below.

Sincerely,



Noah Bookbinder
Executive Director
Citizens for Responsibility and Ethics
in Washington
455 Massachusetts Ave., N.W.
Sixth Floor
Washington, D.C. 20001
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(202) 588-5020 (fax)
nbookbinder@citizensforethics.org

Encl.

FEDERAL ELECTION COMMISSION

NOV 18 PM 2:04

In the matter of:

Gabriel S. Joseph III
FreeEats.com, Inc., dba
ccAdvertising
Americans in Contact PAC

MUR. 6746

AMENDED COMPLAINT

1. Citizens for Responsibility and Ethics in Washington ("CREW") and Noah Bookbinder bring this complaint before the Federal Election Commission ("FEC") seeking an immediate investigation and enforcement action against Gabriel S. Joseph III, FreeEats.com, Inc., dba ccAdvertising, and the Americans in Contact Political Action Committee for direct and serious violations of the Federal Election Campaign Act ("FECA").

Complainants

2. Complainant CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the right of citizens to be informed about the activities of government officials and to ensuring the integrity of government officials. CREW is dedicated to empowering citizens to have an influential voice in government decisions and in the governmental decision-making process. CREW uses a combination of research, litigation, and advocacy to advance its mission.

3. In furtherance of its mission, CREW seeks to expose unethical and illegal conduct of those involved in government. One way CREW does this is by educating citizens regarding the integrity of the electoral process and our system of government. Toward this end, CREW

monitors the campaign finance activities of those who run for federal office and those who make expenditures to influence federal elections, and publicizes those who violate federal campaign finance laws through its website, press releases, and other methods of distribution. CREW also files complaints with the FEC when it discovers violations of the FECA. Publicizing campaign finance violations and filing complaints with the FEC serves CREW's mission of keeping the public informed about individuals and entities that violate campaign finance laws and deterring future violations of campaign finance law.

4. In order to assess whether an individual or entity is complying with federal campaign finance law, CREW needs the information contained in disclosure reports political committees must file pursuant to the FECA, 2 U.S.C. §§ 434(a), (b); 11 C.F.R. §§ 104.1, 104.3. CREW is hindered in its programmatic activity when an individual or entity fails to disclose campaign finance information in reports required by the FECA.

5. CREW relies on the FEC's proper administration of the FECA's reporting requirements because the FECA-mandated disclosure reports are the only source of information CREW can use to determine if an individual or entity is complying with the FECA. The proper administration of the FECA's reporting requirements includes mandating that all disclosure reports required by the FECA are properly and timely filed with the FEC. CREW is hindered in its programmatic activity when the FEC fails to properly administer the FECA's reporting requirements.

6. Complainant Noah Bookbinder is the executive director of Citizens for Responsibility and Ethics in Washington. At all times relevant to the complaint, he has been and remains a citizen of the United States and a registered voter and resident of Maryland. As a

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registered voter, Mr. Bookbinder is entitled to receive information contained in disclosure reports required by the FECA, 2 U.S.C. § 434; 11 C.F.R. §§ 104.1, 104.3. Mr. Bookbinder is harmed when an individual, candidate, political committee, or other entity fails to report campaign finance activity as required by the FECA. *See FEC v. Akins*, 524 U.S. 11, 19 (1998), *quoting Buckley v. Valeo*, 424 U.S. 1, 66-67 (1976) (political committees must disclose contributors and disbursements to help voters understand who provides which candidates with financial support). Mr. Bookbinder is further harmed when the FEC fails to properly administer the FECA's reporting requirements, limiting his ability to review campaign finance information.

Respondents

7. Gabriel S. Joseph III ("Joseph") is, simultaneously, the president of FreeEats.com, Inc., dba ccAdvertising ("ccAdvertising"), and the treasurer of the Americans in Contact Political Action Committee ("AICPAC").

8. ccAdvertising is a telemarketing company that provides telephone survey, polling, and message delivery services ("robocalls") to federal and state candidates and political committees from its offices at 5900 Fort Drive, Suite 302, Centreville, Virginia 20121.

9. AICPAC purports to be a nonconnected political committee that has been registered as such with the FEC since October 1, 2008.

Factual Allegations

10. On Tuesday, October 30, 2012, hundreds of cellular telephone users in the Washington, D.C. area began receiving unsolicited text messages expressly advocating the defeat of President Obama in the general election to be held one week later on November 6, 2012. One text message said, "The Obama administration perpetuated misinformation about

Libya. Vote against Obama!" Another message said, "Obama supports homosexuality and its radical social agenda. Say No to Obama on Nov 6!" None of the text messages contained a disclaimer indicating who paid for the messages. Mike Debonis, Anti-Obama text messages linked to Centreville firm, *Washington Post* (October 31, 2012)(attached as Exhibit A); Brendan Sasso, GOP ad firm defends anti-Obama texts as protected speech, *The Hill* (November 2, 2012)(attached as Exhibit B). See also David A. Graham, The Strange Anti-Obama Texts Blowing Up D.C.-Area Cell Phones, *The Atlantic* (October 31, 2012)(attached as Exhibit C).

11. The text messages originated as e-mails from a number of different Web domains, including votersett.com, informedett.com, republicanett.com, and GOPmessage.com. On Wednesday, October 31, 2012, GoDaddy.com revealed that these domains were registered to Gabriel S. Joseph III, the CEO of ccAdvertising and the treasurer of AICPAC, and were owned by ccAdvertising. See Exhibits A-C. Neither Joseph nor ccAdvertising initially responded to requests for comment on the text messages, but ccAdvertising posted this message on its website: "In the more than 12 years since it's [sic] founding and currently, ccAdvertising has scrupulously complied with all laws and regulations affecting its activities." Aamer Madhani and Gregory Korte, Virginia company tied to anti-Obama texts, *USA Today* (October 31, 2012)(attached as Exhibit D).

12. Joseph subsequently admitted that the text messages had been sent by ccAdvertising. In an interview with *The Hill*, he said that "he sent the messages on behalf of a client, but he declined to name the client or disclose how many messages he sent." See Exhibit B. In fact, the text messages had been ordered and paid for by Joseph himself in his capacity as

treasurer of AICPAC. AICPAC reported paying ccAdvertising \$5,943.67 to send the text messages opposing the re-election of President Obama. See Americans in Contact PAC, FEC Schedule E. 24/48 Hour Notice of Independent Expenditures, October 31, 2012 (electronically signed by Gabriel S. Joseph III)(attached as Exhibit E).

13. On October 1, 2008, Mr. Joseph filed a Statement of Organization for AICPAC with the Federal Election Commission indicating that AICPAC was a nonconnected committee. Indeed, Mr. Joseph emphasized on the Statement of Organization form that AICPAC had no connected organization by circling the words "Connected" and "None" in response to question 6. See Americans in Contact PAC, FEC Form 1, Statement of Organization (October 1, 2008)(attached as Exhibit F).

14. On information and belief, AICPAC was established by Mr. Joseph in his capacity as president of ccAdvertising and is administered and financially supported utilizing the resources and facilities of ccAdvertising for the purpose of generating revenue for ccAdvertising.

15. The major purpose of a nonconnected committee must be the election of candidates. *Buckley v. Valeo*, 424 U.S. 1, 79 (1976). The major purpose of AICPAC, however, appears to be generating revenue for ccAdvertising. Since its creation in 2008, AICPAC has reported making \$496,659 in expenditures to ccAdvertising – nearly 68 percent of all of the expenditures made by AICPAC since 2008. In contrast, AICPAC has contributed only \$43,750 directly to federal and state candidates since its inception in 2008 – less than 6 percent of all its expenditures.

16. AICPAC contributions typically go to committees that employ ccAdvertising as a vendor. Moreover, in many cases when AICPAC makes a contribution to a committee, the contribution is followed shortly thereafter by a payment to ccAdvertising. For example, AICPAC made a \$5,000 contribution to Reagan PAC on January 31, 2010. *See* Reagan PAC, FEC Form 3X, 2010 February Monthly Report at 6. (February 19, 2010)(attached as Exhibit G). Reagan PAC then made a payment of \$5,000 on April 19, 2012 to ccAdvertising for solicitation calls. *See* Reagan PAC, FEC Form 3X, 2010 May Monthly Report at 6. (May 19, 2010)(attached as Exhibit H). Similarly, AICPAC made a contribution of \$2,000 to Huck PAC on May 9, 2011 and Huck PAC then made a payment of \$10,000 to ccAdvertising on May 23, 2011. *See* Huck PAC, FEC Form 3X, 2012 Mid-Year Report at 108, 116 (June 6, 2012)(attached as Exhibit I). In addition, AICPAC made a contribution of \$500 to Steve Daines for Montana on September 25, 2012. *See* Steve Daines for Montana, FEC Form 3X, 2012 October 15 Quarterly Report at 241 (October 15, 2012)(attached as Exhibit J). Steve Daines for Montana then made a payment of \$1,000 to ccAdvertising on October 12, 2012. *See* Steve Daines for Montana, FEC Form 3X, 2012 Pre-General Report at 58 (October 25, 2012)(attached as Exhibit K).

17. On its website, AICPAC states that its goal is "to identify the political opinions and preferences of the 120,000,000 homes in America that are contained in proprietary databases to which AICPAC has access." *See* <http://www.americansincontact.org/about-2/> (screenshot attached as Exhibit L).

18. These proprietary databases belong not to AICPAC, but to ccAdvertising. ccAdvertising's website states that the company "maintains an extensive, two-week current

database of 120,000,000 homes in America. This database is suitable for mailing lists and phone lists." See <http://www.ccadvertising.biz/> (screenshot attached as Exhibit M).

19. On information and belief, Mr. Joseph has gone to elaborate lengths to portray AICPAC as a nonconnected committee, when, in fact, AICPAC is administered by Mr. Joseph using the resources and facilities of ccAdvertising located at Suite 302, 5900 Fort Drive, Centreville, Virginia. AICPAC's official address is a post office box in Alexandria, Virginia located in the same U.S. Post Office building as the post office box for AICPAC's accounting firm, Koch & Hoos, LLC. See Americans in Contact PAC, FEC Form 3X, 2012 Pre-General Report at 1,7 (October 22, 2012)(attached as Exhibit N). On information and belief, the Alexandria, Virginia post office box utilized by AICPAC was rented by Koch & Hoos, LLC at the direction of Mr. Joseph and ccAdvertising in order to make it appear that ccAdvertising was not the connected organization of AICPAC.

20. AICPAC has reported making 45 separate payments of approximately \$200 each for "rent" to HQ Global Workplaces, 1200 G Street, N.W., Suite 800, Washington, D.C. 20005. See, e.g., Americans in Contact PAC, FEC Form 3X, 2012 October 15 Quarterly Report at 9-10 (October 15, 2012)(attached as Exhibit O). HQ Global Workplaces is a division of Regus USA, a provider of virtual office space. The only service that HQ Global Workplaces provides at its 1200 G Street, N.W. location at the rate of \$200 per month is a telephone answering and forwarding service. See <http://www.regus.com/locations/virtual-office/district-of-columbia-washington-metro-center> (screenshot attached as Exhibit P). On information and belief, anyone calling the telephone number for AICPAC would have their call forwarded to Mr. Joseph in ccAdvertising's offices at Suite 302, 5900 Fort Drive, Centreville, Virginia. On information

and belief, AICPAC's use of the telephone answering and forwarding services provided by HQ Global Workplaces is designed solely to make it appear that ccAdvertising is not the connected organization of AICPAC.

Count I

21. The FECA defines a "connected organization" as any organization which is not a political committee but which directly or indirectly establishes, administers, or financially supports a political committee. 2 U.S.C. § 431(7). Commission regulations specify that a connected organization may be a corporation. 11 C.F.R. § 100.6(a). For purposes of determining whether a corporation is the connected organization of a political committee, the term "financially supports" includes the payment of establishment, administration, and solicitation costs of the political committee. 11 C.F.R. § 100.6(c).

22. The Commission's regulations specify that all political committees, including separate segregated funds, established, financed, maintained, or controlled by the same corporation, person, or group of persons are *per se* affiliated. 11 C.F.R. § 100.5(g)(2); see also 11 C.F.R. § 110.3(a)(2).

23. In the absence of *per se* affiliation, 11 C.F.R. § 114.5(g) provides for a case-by-case examination of various factors to determine whether a corporation is affiliated with (i.e., is the connected organization of) a political committee. 11 C.F.R. § 100.5(g)(4)(i) and (ii)(A)-(J); see also 11 C.F.R. § 110.3(a)(3)(i) and (ii)(A)-(J). The Commission examines these factors in the context of the overall relationship between the corporation and the political committee to determine whether the presence of any factor or factors is evidence that the corporation is affiliated with the political committee. 11 C.F.R. §§ 100.5(g)(4)(ii) and 110.3(a)(3)(ii)

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(emphasis added). The factors include: (1) whether the corporation has the ability to direct or participate in the governance of a political committee through formal or informal practices or procedures; (2) whether a corporation has common or overlapping officers, directors, or employees with a political committee which indicates a formal or ongoing relationship between the corporation and the political committee; (3) whether a corporation provides funds on an ongoing basis to a political committee, such as through direct or indirect payments for administrative, fundraising, or other costs; (4) whether a corporation or its agents had an active or significant role in the formation of the political committee; and (5) whether a political committee has a pattern of contributions which indicates a formal or ongoing relationship with a corporation. 11 C.F.R. § 100.5(g)(4)(ii)(B), (E), (G), (I) and (J); see also 11 C.F.R. § 110.3(a)(3)(ii)(B), (E), (G), (I) and (J). These factors are not an exclusive list, and other factors may be considered. FEC Advisory Opinion 1995-36.

24. Even a cursory review of the relationship between ccAdvertising and AICPAC demonstrates that ccAdvertising must, under the Commission's regulations, be considered to be the connected organization of AICPAC, either by applying the single factor or multiple factor tests.

25. The Commission's regulations require it to review the overall relationship between the corporation and the political committee to determine whether the presence of any factor is evidence that the corporation is the connected organization of the political committee. 11 C.F.R. §§ 100.5(g)(4)(ii) and 110.3(a)(3)(ii) (emphasis added). Here, the fact that the same individual, Gabriel S. Joseph III, serves simultaneously as the treasurer of AICPAC and the president of ccAdvertising is sufficient for the Commission to determine that ccAdvertising is

the connected organization of AICPAC. See also FEC Advisory Opinion 1988-14 (finding two corporations to be affiliated because "the governing bodies of each corporation overlap and many of the same people are vested with authority to direct both corporations.").

26. Even if that single factor were not sufficient to demonstrate that ccAdvertising and AICPAC were connected, a simple review of only those facts that are on the public record demonstrates that at least five factors of the Commission's multiple factor test support such a determination.

27. First, the Commission must consider whether the corporation has the ability to direct or participate in the governance of the political committee through formal or informal practices or procedures. 11 C.F.R. § 100.5(g)(4)(ii)(B); see also 11 C.F.R. § 110.3(a)(3)(ii)(B). The same individual, Gabriel S. Joseph III, has day-to-day operational control of both ccAdvertising and AICPAC. That ability to simultaneously control both organizations demonstrates that ccAdvertising has, at the very least, the ability to direct or participate in the governance of AICPAC through informal practices or procedures.

28. Second, the Commission must consider whether a corporation has common or overlapping officers, directors, or employees with a political committee, which indicate a formal or ongoing relationship between the corporation and the political committee. 11 C.F.R. § 100.5(g)(4)(ii)(E); see also 11 C.F.R. § 110.3(a)(3)(ii)(E). Here the evidence of affiliation is overwhelming. Obviously there is an overlap between the officers, directors, and employees of ccAdvertising and AICPAC -- the same individual, Gabriel S. Joseph III, serves simultaneously as the chief executive of both organizations. Clearly the public record provides compelling evidence that the common officers, directors, and employees of ccAdvertising and AICPAC

demonstrate that there is an ongoing relationship between the corporation and the political committee.

29. Third, the Commission must consider whether a corporation provides funds on an ongoing basis to a political committee, such as through direct or indirect payments for administrative, fundraising, or other costs. 11 C.F.R. § 100.5(g)(4)(ii)(G); see also 11 C.F.R. § 110.3(a)(3)(ii)(G). Here the evidence available on the public record indicates that Mr. Joseph personally administers AICPAC using the resources and facilities of ccAdvertising. AICPAC proudly proclaims on its website that it has access to proprietary databases of consumer information – databases, in fact, owned by ccAdvertising. The “rent” paid by AICPAC for its “offices” at 1200 G Street, N.W., Washington, D.C. is nothing more than an elaborate subterfuge to conceal the fact that Mr. Joseph actually administers AICPAC from his office at ccAdvertising at 5900 Fort Drive, Centreville, Virginia.

30. Fourth, the Commission must consider whether a corporation or its agents had an active or significant role in the formation of the political committee. 11 C.F.R. § 100.5(g)(4)(ii)(I); see also 11 C.F.R. § 110.3(a)(3)(ii)(I). Here the president of ccAdvertising was solely responsible for establishing AICPAC. Gabriel S. Joseph III filed the Statement of Organization form establishing AICPAC with the Commission.

31. Fifth, the Commission must consider whether the contribution pattern of the political committee indicates a formal or ongoing relationship with the corporation. 11 C.F.R. § 100.5(g)(4)(ii)(J); see also 11 C.F.R. § 110.3(a)(3)(ii)(J). Here, there is overwhelming evidence that contributions by AICPAC are specifically designed to financially benefit ccAdvertising. AICPAC typically makes contributions to political committees that are clients

of ccAdvertising. Moreover, there are numerous instances in which contributions by AICPAC appear to have been used by political committees to pay ccAdvertising for its services.

32. The evidence in the public record clearly shows that, under either the single factor or multiple factor tests established by the Commission's regulations, ccAdvertising is the connected organization of AICPAC. Moreover, because Gabriel S. Joseph III was president of ccAdvertising when AICPAC was established, the evidence demonstrates that Gabriel S. Joseph III knowingly made a false statement to the Commission when he filed a Statement of Organization claiming that AICPAC had no connected organization. Any person who signs a Statement of Organization form that contains false information is subject to civil penalties pursuant to 2 U.S.C. § 437g. More importantly, knowingly making a false statement to the Commission is a criminal violation of 18 U.S.C. § 1001.

33. The evidence in the public record clearly shows that AICPAC is not a nonconnected committee, but is instead a separate segregated fund of ccAdvertising. A nonconnected committee is free to raise funds from the general public, while a separate segregated fund may only raise funds from a restricted class of executive and administrative personnel employed by the fund's connected corporation. 2 U.S.C. § 441b(b)(4)(A)(i). Since its inception in 2008, AICPAC has raised approximately three-quarters of a million dollars (\$750,000) from the general public. Because the evidence in the public record clearly indicates that AICPAC is the separate segregated fund of ccAdvertising, the vast majority of that three-quarters of a million dollars (\$750,000) was raised in violation of 2 U.S.C. § 441b(b)(4)(A)(i).

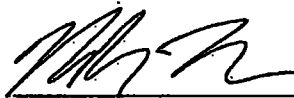
Count II

34. The FECA and FEC regulations require that an independent expenditure contain a disclaimer that clearly states the name and permanent street address, telephone number, or World Wide Web address of the person who paid for the communication, and state that the communication is not authorized by any candidate or candidate's committee. 2 U.S.C. § 441d(a)(3); 11 C.F.R. § 110.11(a)(3).

35. By failing to disclose the required information on the independent expenditures that were disseminated on October 30, 2012, AICPAC and Mr. Joseph, personally and in his capacity as treasurer of AICPAC, violated 2 U.S.C. § 441d(a)(3) and 11 C.F.R. § 110.11(a)(3).

Conclusion

WHEREFORE, Citizens for Responsibility and Ethics in Washington and Noah Bookbinder request that the FEC conduct an investigation into these allegations, declare the respondents to have violated the FECA and applicable FEC regulations, order respondents to correct these violations by amending AICPAC's Statement of Organization and including the legally required disclaimers on all future independent expenditures. In addition, the complainants request that the FEC impose sanctions appropriate to these violations and take such further action as may be appropriate, including referring this case to the Department of Justice for criminal prosecution.



ON BEHALF OF COMPLAINANTS

Noah Bookbinder
Executive Director
Citizens for Responsibility and Ethics in
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VERIFICATION

Citizens for Responsibility and Ethics in Washington and Noah Bookbinder verify that the statements made in the attached Complaint are, upon information and belief, true. Sworn pursuant to 18 U.S.C. § 1001.



Noah Bookbinder

Sworn to and subscribed before me this 18th day of November 2015.



Notary Public

